

CRATED

01/05/2007 1:05PM Brady, Noel re: 3 Stipulation

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
X  
THE ANNUITY, WELFARE and APPRENTICESHIP SKILL  
IMPROVEMENT & SAFETY FUNDS of the  
INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 15, 15A, 15C and 15D, AFL-CIO, by its TRUSTEES  
JAMES T. CALLAHAN, WILLIAM H. HARDING,  
LYNN A. MOUREY and ROBERT SHAW, and JOHN and  
JANE DOE, as Beneficiaries of the ANNUITY, WELFARE and  
APPRENTICESHIP SKILL IMPROVEMENT & SAFETY  
FUNDS of the INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 15, 15A, 15C and 15D, AFL-CIO.

Plaintiffs,

-against-

MANETTA INDUSTRIES, INC.,

Defendant.  
\_\_\_\_\_X

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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/5/07

**STIPULATION  
OF SETTLEMENT  
AND ORDER OF  
DISCONTINUANCE**

07-CIV-8417 (PKC)

This **STIPULATION OF SETTLEMENT** is made by and between the parties hereto, to  
wit, Plaintiffs, ANNUITY, WELFARE and APPRENTICESHIP SKILL IMPROVEMENT &  
SAFETY FUNDS OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 15, 15A, 15C & 15D, AFL-CIO (the "LOCAL 15 TRUST FUNDS") and Defendant  
MANETTA INDUSTRIES, INC. ("MANETTA INDUSTRIES").

**WHEREAS**, Defendant MANETTA INDUSTRIES is indebted to the various fringe  
benefit funds established for the benefit of the members of LOCAL 15 and known as the LOCAL  
15 TRUST FUNDS in the amount of \$79,280.20 for the period of July 1, 2003 through July 31,  
2006 as identified in a revised audit report issued on October 29, 2007; and

**WHEREAS**, the parties are desirous of resolving in this Stipulation of Settlement and  
Order of Discontinuance all disputes between them.

Case 1:07-cv-08417-PKC Document 6 Filed 11/05/2007 Page 2 of 4

Case 1:07-cv-08417-PKC Document 6 Filed 11/05/2007 Page 2 of 4

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto mutually agree as follows:

1. Defendant MANETTA INDUSTRIES acknowledges and agrees to pay the amount in contributions totaling \$79,280.20 along with interest thereon in the amount of \$3,459.80 calculated for the six month period of the payment plan articulated hereafter at the rate of 8.75% (or one percent over the prime rate of 7.75%), for a total settlement amount of \$82,740.00 to be paid as follows:

- a. \$13,790.00 on or before November 1, 2007
- b. \$13,790.00 on or before December 1, 2007;
- c. \$13,790.00 on or before January 1, 2008;
- d. \$13,790.00 on or before February 1, 2008;
- e. \$13,790.00 on or before March 1, 2008; and
- f. \$13,790.00 on or before April 1, 2008.

2. Payments shall be made by bank check made payable to the "LOCAL 15 TRUST FUNDS" and forwarded to the Plaintiffs' attorneys, BRADY MCGUIRE & STEINBERG, P.C., Attn: James M. Steinberg, at 603 Warburton Avenue, Hastings-on-Hudson, New York 10706.

3. In exchange for the prompt and full payments identified herein, the Plaintiffs waive any claims for liquidated damages, attorneys' fees, costs and/or disbursements associated with this action otherwise available under the Employee Retirement Income Security Act of 1974. Notwithstanding the above, in the event that Defendant MANETTA INDUSTRIES fails to make any payment identified herein or rectify any default in accordance with Paragraph 5 hereafter, Defendant MANETTA INDUSTRIES acknowledges that the Plaintiffs shall have the right to enter judgment in the amount as described in Paragraph 5 hereafter.

4. Defendant MANETTA INDUSTRIES, hereafter, agrees to remain current in the payment of all fringe benefit contributions owed on behalf of the LOCAL 15 members in its employ.

5. In the event of any default by Defendant MANETTA INDUSTRIES in the payment due under the provisions of this Stipulation, and provided that said default continues for a period of five (5) days after notice to cure is sent to the Defendant *via* certified mail at 44-17 54<sup>th</sup> Drive, Maspeth, New York 11378, the Clerk of the United States District Court for the Southern District of New York is hereby authorized to enter judgment on the application of the Plaintiffs against Defendant MANETTA INDUSTRIES in the amount of \$28,125.45 (which includes statutory damages in the amount of \$2,145.45 as provided for under ERISA and attorneys' fees in the amount of \$1,710.00), less payments received through the date of default.

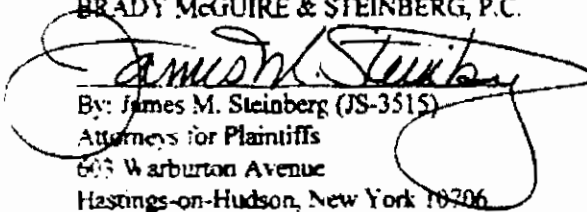
**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, including the attorneys of record for the Plaintiffs and the Defendant MANETTA INDUSTRIES that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action, the above-captioned action shall be discontinued, without costs to either party as against the other.

**IT IS HEREBY FURTHER STIPULATED AND AGREED**, by and between the undersigned, including the attorneys of record for the Plaintiffs and Defendant MANETTA INDUSTRIES, that this Stipulation may be executed in any number of counterparts and by different parties

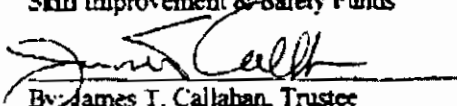
hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same Stipulation.

Dated: Hastings-on-Hudson, New York  
October 31, 2007

BRADY MCGUIRE & STEINBERG, P.C.

  
By: James M. Steinberg (JS-3515)  
Attorneys for Plaintiffs  
605 Warburton Avenue  
Hastings-on-Hudson, New York 10706  
(914) 478-4293

I.U.O.E. LOCAL 15, 15A, 15C & 15D  
Annuity, Welfare & Apprenticeship  
Skill Improvement & Safety Funds

  
By: James T. Callahan, Trustee

So Ordered:

  
The Honorable P. Kevin Castel, U.S.D.J.

MANETTA INDUSTRIES, INC.

  
By: Enrico Manetta, President

11-5-07